

REMARKS**Election/Restriction**

The Examiner has required restriction to one of the following inventions under 35 U.S.C. §121:

- Group I: claims 1-17, 35-38 drawn to nucleic acids, host cells comprising nucleic acids and methods of detecting nucleic acids, classified in class 435, subclass 6.
- Group II: claims 18-24, drawn to polypeptides, classified in class 530, subclasses 300 and 350.
- Group III: claims 25-34, drawn to methods of producing a fine chemical, classified in class 530, subclass 412.

Applicants hereby elect, without traverse, Group I (claims 1-17 and 35-38) under 35 U.S.C. §121 for prosecution in the present application.

At page 3 of the instant Restriction Requirement, the Examiner states that:

Claims 1-38 are drawn to nucleotide and amino acid sequences, nucleotide and amino acid constructs, and/or methods requiring the use of nucleotide or amino acid sequence or constructs that contain more than one individual, independent, and distinct nucleotide or amino acid sequence in alternative form. Accordingly, these claims are subject to restriction under 35 U.S.C. §121 as outlined in 1192 O.G. 68 (Nov. 19, 1996). Applicant is required to select no more than one of the individual sequences for examination.

Applicants elect SEQ ID NO:1, *with traverse*. Applicants respectfully submit that the policy set forth in 1192 O.G. 68 (Nov. 19, 1996) clearly provides that a *reasonable number* of sequences are allowed to be claimed in a single application. It has been determined that "normally ten sequences constitute a reasonable number for examination purposes" and, thus, up to ten independent and distinct sequences are often examined in a single application without restriction. M.P.E.P. §804.4 and 1192 O.G. 68 (Nov. 19, 1996). In the interest of saving considerable time and cost to Applicants and the United States Patent Office, and in accordance with 1192 O.G. 68 (Nov. 19, 1996),

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Applicants respectfully request that at least 10 sequences be examined in the instant application.

Furthermore, it is the Applicants' position that, with respect to the claimed nucleotide sequences, a species election for searching purposes would be more appropriate in this situation.

Applicants respectfully submit that a sufficient search and examination with respect to the claimed nucleotide sequences can be made without serious burden on the Examiner. As the M.P.E.P. states:

[i]f the search and examination of an entire application can be made without serious burden, the examiner must examine it on the merits, even though it includes claims to independent or distinct inventions. M.P.E.P. § 803.

Applicants respectfully submit that the searches with regard to each SEQ ID NO. would be co-extensive and would not involve a serious burden on the Examiner. Applicants therefore request that the Examiner re-characterize the restriction requirement with respect to the SEQ ID NOs. as a species election requirement.

It is the Applicants' understanding that under 35 U.S.C. §121, an election of a single species for prosecution on the merits is required, to which the claims will be restricted if no generic claim is finally held allowable. Applicants submits that claim 1 is generic. Applicants further understand that upon the allowance of a generic claim, Applicants will be entitled to consideration of claims to additional species which are written in dependent from or otherwise include all the limitations of an allowed generic claims as provided by 37 C.F.R. §1.41 *et seq.*

Accordingly, within Group I, Applicants hereby further elect the species of SEQ ID NO:1, SEQ ID NO:3, SEQ ID NO:5, SEQ ID NO:6, SEQ ID NO:15, SEQ ID NO:17, SEQ ID NO:19, SEQ ID NO:21, SEQ ID NO:23, and SEQ ID NO:25 for search purposes only. Applicants even further elect the species of SEQ ID NO:1 for search purposes only.

Applicants reserve the right to traverse the above restriction with respect to non-elected Groups II-III in this or subsequent applications.

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SUMMARY

If a telephone conversation with Applicants' Attorney would expedite the prosecution of the above-identified application, the examiner is urged to call the undersigned at (617) 227-7400.

Respectfully submitted,



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Dated: December 6, 2001**BEST AVAILABLE COPY**